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No. 92-1451

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC. AND
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT TRANS WORLD AIRLINES, INC. IN OPPOSITION

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QUESTIONS PRESENTED

I. Is the defendant in a bankruptcy court preference action entitled to a jury trial where that defendant has invoked the equitable claims allowance process of the bankruptcy court by filing a proof of claim?

II. Does bankruptcy court jurisdiction over a preference action against a defendant who has filed a proof of claim violate Article III of the United States Constitution?

LIST OF PARTIES AND RULE 29.1 LISTING

The names of all parties appear in the caption of the case. Respondent Trans World Airlines, Inc. ("TWA") is a Delaware corporation. TWA has no parent company, and all of TWA's subsidiaries and affiliates are wholly owned except Travel Marketing Corporation.

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BRIEF FOR RESPONDENT TRANS WORLD AIRLINES, INC. IN OPPOSITION

Respondent TWA respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Third Circuit's decision.

STATEMENT OF THE CASE

On October 22, 1991, the United States District Court for the Southern District of New York entered judgment in favor of Petitioner Travellers International AG. ("Travellers" or "Petitioner") on Travellers' breach of contract action against Respondent TWA in the amount of $12,336,127.41.[1] TWA obtained a stay of execution on the judgment pending appeal by depositing $13,693,101.42 (the "Deposit") in lieu of a supersedeas bond with the clerk of that court on November 4, 1991.

Less than ninety days after making the Deposit, TWA filed a petition for reorganization under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. TWA later filed this adversary proceeding in the bankruptcy court. TWA's complaint against Travellers, as amended, seeks a declaration that the Deposit is a voidable preference under 11 U.S.C. §§ 547 and 550 and, alternatively, that the Deposit belongs to TWA as property of the estate under 11 U.S.C. § 542. TWA also seeks an injunction preventing Travellers from making any claim to the Deposit under 11 U.S.C. § 105.

The bankruptcy court issued a Notice of Bar Date For Filing Proofs of Claim dated April 3, 1992. Pet. App. 30a. The Notice provided that creditors of TWA having prepetition claims must file proofs of claim on or before May 15, 1992 if they desired to participate in the bankruptcy case. Pet. App. 35a. Travellers never objected to or sought any form of relief from the Notice.

On May 14, 1992, Travellers elected to file a proof of claim in the bankruptcy court. Pet. App. 39a. The proof of claim asserted that Travellers had a secured claim of

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[1] *Travellers Int'l AG. v. Trans World Airlines, Inc.*, No. 88 Civ. 1484 (RJW) (S.D.N.Y.), *appeal docketed*, No. 91-9250 (2d Cir. Dec. 2, 1991).

$13,005,778.02, and stated that Travellers' claim had arisen during "1988 through 1990" and had totalled $12,688,381.97 at the time TWA filed its bankruptcy petition. Pet. App. 39a ¶¶ 3-5. Travellers added in a supplement to its proof of claim that if TWA prevailed in this adversary proceeding, Travellers' claim would be an unsecured claim. Pet. App. 41a.

On July 15, 1992, Travellers filed a motion requesting that the United States District Court for the District of Delaware withdraw the reference of this adversary proceeding from the bankruptcy court. Travellers argued that the district court should hear this action because Travellers is entitled to a jury trial which the bankruptcy court cannot conduct; and that bankruptcy court jurisdiction over this action violates Article III of the United States Constitution. The United States District Court for the District of Delaware denied Travellers' motion. Pet. App. 25a.

Travellers petitioned the United States Court of Appeals for the Third Circuit to issue a writ of mandamus directing the district court to withdraw the adversary proceeding and conduct a jury trial. The Third Circuit denied Travellers' petition for a writ of mandamus on December 28, 1992 (Pet. App. 29a) and denied Travellers' petition for rehearing and rehearing in banc on January 19, 1993 (Pet. App. 28a).

SUMMARY OF THE ARGUMENT

The Third Circuit's denial of Travellers' mandamus petition follows the controlling decision in *Langenkamp v. Culp*, 498 U.S. 42 (1990), and does not conflict with prior decisions of this Court or other federal cases. The law applicable to the issues raised by Travellers is clear, and departure from this Court's prior Seventh Amendment and Article III cases is unwarranted. The procedural posture of this case also makes it inappropriate for review of the questions presented. Accordingly, the petition for a writ of certiorari should be denied.

REASONS FOR DENYING THE WRIT

I. THE THIRD CIRCUIT'S DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT OR OTHER FEDERAL COURTS.

A. The Third Circuit's Decision Does Not Conflict With Decisions Governing The Right To Jury Trial In Bankruptcy Cases.

The Third Circuit held that Petitioner is not entitled to a jury trial in this preference action because it filed a proof of claim against the TWA bankruptcy estate. Pet. App. 11a. That decision applies, and is fully consistent with, this Court's decisions in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) and *Langenkamp v. Culp*, 498 U.S. 42 (1990).

In *Granfinanciera*, this Court held that a person who has not submitted a claim against a bankruptcy estate has a right to a jury trial when sued by the trustee in bankruptcy to recover an allegedly fraudulent monetary transfer. 492 U.S. at 36. A year later, in *Langenkamp*, this Court held that persons who had filed proofs of claim in the bankruptcy court were not entitled to a jury trial in preference actions against them. 498 U.S. at ___, 113 S. Ct. at 331. In a per curiam opinion, this Court reiterated its earlier determination in *Granfinanciera* that "by filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Id.* (quoting *Granfinanciera*, 492 U.S. at 57-58 and n.14).[2]

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[2] The denial of a jury trial on matters within the bankruptcy court's equitable power follows from the established principle that the Seventh Amendment right to jury trial does not exist in equity, but only in actions at common law. *See, e.g., Pernell v. Southhall Realty*, 416 U.S. 363, 375 (1974) (quoting *Parsons v. Bedford*, 28 U.S. 433, 447 (1830)).

After *Granfinanciera* and *Langenkamp*, entitlement to a jury trial clearly turns on whether the preference defendant files a proof of claim with the bankruptcy court. Because Petitioner filed a proof of claim in the TWA bankruptcy case, the Third Circuit's rejection of Petitioner's jury trial argument merely follows -- and presents no conflict with -- this Court's controlling decisions in *Granfinanciera* and *Langenkamp*.

Petitioner argues that the Third Circuit should have exempted certain types of proofs of claim from the *Langenkamp* rule. Pet. 7-8. Such arguments were raised and rejected in *Langenkamp* itself.[3] Moreover, Petitioner can point to no decision since *Granfinanciera* that has ever conferred a right to jury trial upon a preference defendant who has filed a proof of claim.[4] To the contrary, the decisions since *Granfinanciera* that address this issue are all in accord with the Third Circuit. *See First Fidelity Bank, N.A. v. Hooker Invs., Inc. (In re Hooker Invs., Inc.)*, 937 F.2d 833, 837-38 (2d Cir. 1991) (right to jury trial depends on whether a proof of claim is submitted against the estate); *Keller v. Blinder (In re Blinder Robinson & Co.)*, 135 B.R. 892, 896 (D. Colo. 1991) (right to jury trial depends upon whether a claim is submitted against the estate); *Rooker v. Levy (In re Levy)*, 122 B.R. 819, 820 (Bankr. N.D. Ga. 1991) (no right to

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[3] Petitioner's argument that the proof of claim it filed did not trigger the claims allowance process mirrors an argument already considered and rejected in *Langenkamp*. The *Langenkamp* respondents argued that their proofs of claim were merely an "administrative procedure" and that the equity power of the bankruptcy court was "never invoked." *See Answer In Opp'n To Pet. For Writ Of Cert. To The United States Court Of Appeals For The Tenth Circuit* for Respondent at 3, *Langenkamp v. Culp*, 498 U.S. 42 (1990) (No. 90-93). This Court did not accept that argument, and admonished the Tenth Circuit for having overlooked the "clear distinction" between those who had filed a claim and those who had not. 498 U.S. at ___, 111 S. Ct. at 332.

[4] The district court noted the complete dearth of authority supporting Petitioner's entitlement to a jury trial, stating that "Travellers is unable to direct the Court to any case where a similarly situated preference defendant has been deemed entitled to a jury trial after submission of a proof of claim ...." Pet. App. 21a.

jury trial where plaintiff in adversary proceeding filed a proof of claim against the estate); *Glen Eagle Square, Inc. v. Meehan-Weinmann, Inc. (In re Glen Eagle Square, Inc.)*, 132 B.R. 106, 111 (Bankr. E.D. Pa.) (filing a proof of claim has a "'preclusive effect'" on right to jury trial), *aff'd*, 132 B.R. 115 (E.D. Pa. 1991); *Citicorp N. Am., Inc. v. Finley (In re Washington Mfg. Co.)*, 133 B.R. 113, 117 (M.D. Tenn. 1991) (trustee has no right to jury trial in a fraudulent conveyance action where the creditor has filed a proof of claim); *W.E. Tucker Oil Co. v. Commercial Bank & Trust Co. (In re W.E. Tucker Oil Co.)*, 122 B.R. 719, 719-20 (W.D. Ark. 1990) (creditor's demand for jury trial denied where creditor filed a proof of claim); *Committee of Unsecured Creditors v. Memorial Mission Medical Ctr., Inc. (In re North Carolina Hosp. Ass'n)*, 112 B.R. 759, 760 n.1 (Bankr. E.D.N.C. 1990) (filing proof of claim constitutes waiver of right to jury trial even where claim is scheduled as unliquidated); *Gray v. Bill Ciaccia & Assocs. (In re Paris Indus. Corp.)*, 106 B.R. 344, 345 (Bankr. D. Me. 1989) (preference defendant who had submitted proof of claim was not entitled to a jury trial). *See also Mid Island Equities Corp. v. Barral (In re Barral)*, 139 B.R. 789, 790 (Bankr. S.D.N.Y. 1992); *Siemens Components, Inc. v. Choi (In re Choi)*, 135 B.R. 649, 652 (Bankr. N.D. Cal. 1991); *Splash v. Irvine Co. (In re Lion Country Safari, Inc.)*, 124 B.R. 566, 571 (Bankr. C.D. Cal. 1991); *Murray v. Prescott, Ball & Turben, Inc. (In re Chicago, Missouri & W. Ry. Co.)*, 124 B.R. 769, 771 (Bankr. N.D. Ill. 1991).

In *First Fidelity Bank, N.A. v. Hooker Investments, Inc. (In re Hooker Investments, Inc.)*, 937 F.2d 833 (2d Cir. 1991), the Second Circuit rejected contentions by secured creditors no different from Petitioner's argument here. It determined that:

> filing a proof of claim is not merely a means of providing information to the bankruptcy court, but is a means of invoking the bankruptcy court's equitable jurisdiction ... . [The secured creditor seeks] to preserve both its

> right to a jury trial .... [But, the secured creditor] offers no basis ... for disregarding the general rule of *Langenkamp* and *Granfinanciera* ... .

937 F.2d at 838 (citations omitted).

Petitioner argues that the Third Circuit decision is "irreconcilable" with *Dexter v. Gilbert (In re Kirchoff Frozen Foods, Inc.)*, 496 F.2d 84 (9th Cir. 1974), *Piombo Corp. v. Castlerock Properties (In re Castlerock Properties)*, 781 F.2d 159 (9th Cir. 1986), and *In re Eakin*, 154 F.2d 717 (2d Cir. 1946). Pet. 14-15. Those decisions do not address the right to jury trial and, in any event, predate *Granfinanciera* and *Langenkamp*. Similarly, Petitioner's attempt to portray the Third Circuit's decision as conflicting with the Tenth Circuit opinion in *Langenkamp* (Pet. 14) has no current significance. That portion of the Tenth Circuit decision pertaining to preference defendants who had filed proofs of claim was reversed by this Court in *Langenkamp*.[5]

B. The Third Circuit's Decision Does Not Conflict With Decisions Governing Entitlement To An Article III Forum In Bankruptcy Cases.

Petitioner also argues that even if Petitioner has no right to a jury trial, the district court was required to withdraw the reference of this preference action from the bankruptcy court so that it could be heard by an "Article III" federal district court. Pet. 12. The Third Circuit's rejection of this alternative argument (Pet. App. 10a n.5) creates no conflict with the decisions of this Court or other federal courts. None of this Court's Article III decisions has held

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[5] Because there is no conflict between this Court's decisions and the Third Circuit's decision rejecting Petitioner's jury demand, Petitioner attempts to inject a conflict on an issue not decided below. Petitioner argues that *if* Petitioner is entitled to a jury trial, the bankruptcy court cannot conduct one. Pet. 15 n.11. That issue was never reached by the Third Circuit or by the district court. Accordingly, this case is not an appropriate one in which to review it.

that a preference action in bankruptcy court against a creditor who has filed a proof of claim must be decided by a federal district court judge.

The application of Article III to bankruptcy cases had its genesis in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). There, this Court determined that Article III precluded the bankruptcy court from exercising jurisdiction over a state law contract action against a third party who had not filed a claim in the bankruptcy court. The Court's plurality opinion expressly distinguished Article III jurisdiction over such cases from the bankruptcy court's "traditional" jurisdiction over federal matters such as the manner in which the rights of debtors and creditors are adjusted. *Id.* at 71.

In subsequent decisions, this Court has preserved the distinction established in *Northern Pipeline* and confirmed the limited reach of its holding.[6] In *Granfinanciera*, this Court again distinguished between "'[t]he restructuring of debtor-creditor relations, which is at the core of federal bankruptcy power ... [and] state-created private rights, such as the right to recover contract damages ... .'" *Granfinanciera*, 492 U.S. at 56 n.12 (quoting *Northern Pipeline*, 458 U.S. at 71).

The restructuring of debtor-creditor relations occurs through the process of allowance and disallowance of claims. As this Court recognized in *Langenkamp*, once a creditor triggers the claims allowance process by filing a claim, that claim and any preference action against the creditor "become integral to the restructuring of the

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[6] *See Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 584 (1985) (*Northern Pipeline* "establishes *only* that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law ... .") (emphasis added); *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 849 (1986) ("Our precedents also demonstrate, however, that Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court.") (citing *Thomas*, 473 U.S. at 583; *Crowell v. Benson*, 285 U.S. 22, 87 (1932)).

debtor-creditor relationship ... ." 498 U.S. at ___, 111 S. Ct. at 331.

Once Petitioner filed its proof of claim, Petitioner's claim and this preference action became a part of the process of restructuring debtor-creditor relations.[7] Accordingly, the Third Circuit's rejection of Petitioner's argument presents no conflict with this Court's application of Article III to state law contract actions asserted against those who have not filed a claim in bankruptcy court and are not involved in that process.

The Third Circuit's rejection of Petitioner's Article III challenge also creates no conflict among the circuits. Petitioner does not cite, and counsel for Respondent are unaware of, any decision requiring a district court to withdraw the reference of a preference action pending in bankruptcy court against a creditor who has filed a proof of claim.

This Court recently denied a petition for certiorari to review another decision reaching the same result as the Third Circuit here. In *Saker v. Luper (In re Holiday Towers)*, No. 91-3854, 1992 WL 107063 (6th Cir. May 15, 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 326 (1992), the Sixth Circuit held that Article III did not affect bankruptcy court jurisdiction to determine a secured creditor's claim for attorneys' fees and the validity of its lien. Like the Third Circuit, the Sixth Circuit applied the settled principle that "'[t]he restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be

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[7] Because a proof of claim alerts the court to a creditor's desire to participate in this process, the importance of the act of filing a proof of claim as it relates to the administration of a bankruptcy case cannot be understated. Under the Bankruptcy Code, the claims allowance process is initiated immediately upon the filing of a proof of claim, since a "claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). *See also Glen Eagle Square, Inc. v. Meehan-Weinmann, Inc. (In re Glen Eagle Square, Inc.)*, 132 B.R. 106, 112 (Bankr. E.D. Pa.) (the filing of a proof of claim is not a "mere procedural nicety"), *aff'd*, 132 B.R. 115 (E.D. Pa. 1991).

distinguished from the adjudication of state-created private rights'" under Article III. *Id.* at *3 (quoting *Northern Pipeline*, 458 U.S. at 71). Like the Third Circuit, the Sixth Circuit rejected the creditor's Article III challenge because the matter before it involved the restructuring of debtor-creditor relations. *See also Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1389-90 (2d Cir. 1990) (rejecting Article III challenge to adversary proceeding based on "crucial distinction" that, unlike the defendant in *Northern Pipeline*, creditor had "filed a proof of claim" and become a part of the bankrupty restructuring process).[8]

II. THE PRIOR DECISIONS OF THIS COURT APPLIED BY THE THIRD CIRCUIT HAVE CLEARLY RESOLVED THE QUESTIONS PRESENTED AND NO FURTHER REVIEW IS REQUIRED.

As demonstrated above, the Third Circuit's decision presents no conflict with the decisions of this Court or other federal courts. Those decisions make clear that by filing a proof of claim in bankruptcy court, a creditor relinquishes any right to insist that a preference action against him be tried to a jury in federal district court. This is but one application of the established rule that where a proof of claim has been filed, the creditor has "demand[ed] its allowance [and] must abide the consequences of that procedure." *Gardner v. New Jersey*, 329 U.S. 565, 573 (1947).

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[8] Petitioner wrongfully accuses the Third Circuit of confusing Seventh Amendment analysis with Article III analysis. Pet. 10. The Third Circuit did not characterize *Langenkamp* as an Article III case, but did rely on *Langenkamp*'s determination that once a creditor files a proof of claim, the claim and any preference action against the creditor become integral to the restructuring of the debtor-creditor relationship. Pet. App. 10a n.5. That core restructuring process does not depend on Article III.

Petitioner's argument that *Langenkamp* should be narrowed, so that a creditor could file certain types of "contingent" or "protective" proofs of claim without relinquishing a right to jury trial (Pet. 14-15), would erode the "clear distinction" established in *Langenkamp* and hopelessly confuse the straightforward treatment of jury demands under *Langenkamp*. In every adversary proceeding against a creditor, the bankruptcy court could assess the creditor's jury demand only by first analyzing the content of his proof of claim to determine whether it was a "protective" claim filed only for notice purposes, a "contingent" claim that might arise at some uncertain future date, or a "claim" that for some other reason was allegedly not a "claim against the estate."[9] Requiring such determinations would intrude unreasonably into the core process of restructuring debtor-creditor relationships.

Similarly, acceptance of Petitioners' Article III arguments presumably would mean that *all* preference actions filed against creditors of the debtor -- no matter how closely intertwined with the claims allowance process of

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[9] Petitioner falsely asserts that it is not a creditor. Pet. 9-10. Under the Bankruptcy Code,

> "creditor" means-
>
> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section ... 502(h) ... .

11 U.S.C. § 101(10).

Petitioner's contention that it has not asserted a claim against the estate is equally false. Pet. 7-8. Petitioner's alleged "secured claim," as well as its purported "contingent" unsecured claim, are each included in the Bankruptcy Code's definition of claim:

> "claim" means-
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, *contingent*, matured, unmatured, disputed, undisputed, legal, equitable, *secured*, or unsecured ... .

11 U.S.C. § 101(5)(A) (emphasis added).

the bankruptcy court -- would have to be adjudicated separately in federal district court. Given the already staggering caseload of the district courts, that would add years of delay at the expense of other creditors and would fragment the bankruptcy process.

Petitioner argues that the Third Circuit's decision deprives all preference defendants of the right to a jury trial in an Article III Court. Pet. 16. That argument ignores the fact that defendants in preference actions who wish to assert such rights can avoid injecting themselves into the claims allowance process by not filing a proof of claim. The *Langenkamp* rule and the Third Circuit's decision extend only to defendants who, like Petitioner, contemplate the desirability of participating in the claims allowance process and take the affirmative step of filing a proof of claim.[10]

This Court's existing precedents establish rules that are clear to courts and litigants. No lower courts have deviated from them. Further review of the arguments in the Petition is unnecessary.

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[10] Petitioner erroneously characterizes its proof of claim as a "defensive" notice of a future claim that Petitioner will have only if it loses this adversary proceeding. Actually, Petitioner's proof of claim states that Petitioner's claim arose during "1988 through 1990," prior to the filing of TWA's bankruptcy petition and this adversary proceeding; and seeks allowance of an alleged secured claim presently totalling over $13 million. Pet. App. 39a ¶¶ 3-5. Petitioner's proof of claim deliberately goes far beyond merely attempting to "defend" some future right to assert an unsecured claim.

Contrary to Petitioner's contention, the Third Circuit's decision does not require preference defendants to file proofs of claim. As an alleged secured creditor, Petitioner could have elected to rely solely upon whatever rights it is ultimately found to have in its collateral. Instead, Petitioner filed a proof of claim that asked the bankruptcy court either to allow its secured claim, or to permit Petitioner to share in a distribution from the estate as an unsecured creditor. Having chosen as a matter of litigation strategy to invoke the benefit of the claims allowance process of the bankruptcy court, Petitioner cannot now repudiate that process and the consequences of its choice. *See First Fidelity Bank*, 937 F.2d at 838-40.

III. THIS IS NOT AN APPROPRIATE CASE FOR REVIEW OF THE QUESTIONS PRESENTED.

Even if Petitioner's arguments presented issues otherwise worthy of review, the procedural posture of this case renders it unattractive for determination of the matters presented. The Third Circuit's decision is a denial of a mandamus petition and does not present the Court with a final judgment. Reversal of that decision would lead only to the Third Circuit having to address further procedural issues reserved in its opinion. Those issues include whether, apart from the merits, Petitioner would be entitled procedurally at this juncture to the extraordinary interlocutory remedy of mandamus (Pet. App. 6a); and whether Petitioner's arguments must be rejected in any event because its jury demand was untimely (Pet. App. 7a n.3).

Finally, TWA has filed a motion for partial summary judgment that remains pending in the bankruptcy court. That motion should determine which issues remain for trial, and may severely limit or even moot Petitioner's jury trial arguments.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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Dated: April 6, 1993